## UNITED STATES DISTRICT COURT EASTERN DISTRICT OF MISSOURI SOUTHEASTERN DIVISION

MICHAEL STOCKDALE,	)	
Plaintiff,	)	
v.	)	No. 1:06-CV-25 CAS
CHUCK DWYER, et al.,	)	
Defendants.	)	

## **MEMORANDUM AND ORDER**

This matter is before the Court on plaintiff's motion for leave to file an amended complaint.

Plaintiff's motion will be denied without prejudice for the following reasons.

Although leave to amend is to be freely granted under Federal Rule of Civil Procedure 15(a), the Court has discretion whether or not to grant leave to amend. Zenith Radio Corp. v. Hazeltine Research, Inc., 401 U.S. 321, 330-32 (1971). Factors to consider in determining whether leave to amend should be granted include but are not limited to (1) whether the motion was filed in bad faith or with dilatory motive; (2) whether the motion was filed with undue delay; (3) whether leave to amend would be unduly prejudicial to the opposing parties; and (4) whether the proposed amendment would be futile. See Bell v. Allstate Life Ins. Co., 160 F.3d 452, 454 (8th Cir. 1998) (citing Foman v. Davis, 371 U.S. 178, 182 (1962)); Williams v. Little Rock Municipal Water Works, 21 F.3d 218, 224 (8th Cir. 1994).

The Court notes that plaintiff's proposed amended complaint does not comply with Rule 10(a) of the Federal Rules of Civil Procedure because the caption does not include the name of each defendant. Rule 10(a) states in pertinent part, "In the complaint the title of the action shall include

the names of all the parties . . . . " Fed. R. Civ. P. 10(a). Because an amended complaint supersedes

the original and renders the original complaint without legal effect, see In Home Health, Inc. v.

Prudential Ins. Co., 101 F.3d 600, 603 (1996), the allegations of the original complaint may not

supplement any deficiencies in the amended complaint. Therefore, plaintiff's proposed amended

complaint names only one defendant, Mr. Dwyer. The Court does not believe this was plaintiff's

intent.

The Court will therefore deny plaintiff leave to file the proposed amended complaint, without

prejudice. Plaintiff may promptly submit a new motion for leave to file an amended complaint

together with a proposed amended complaint attached that lists all of the parties to the case in the

caption. The Court does not make a ruling at this time concerning whether, under the factors listed

above, leave should be granted for the filing of plaintiff's proposed amended complaint.

Accordingly,

IT IS HEREBY ORDERED that plaintiff's motion for leave to amend his complaint is

**DENIED without prejudice**. [Doc. 16]

CHARLES A. SHAW

UNITED STATES DISTRICT JUDGE

Dated this 28th day of July, 2006.

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